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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,118	09/25/2001	Eugene David Rodgers	9080/23611	9968
21888	7590	12/19/2003	EXAMINER	
THOMPSON COBURN, LLP			COLE, ELIZABETH M	
ONE US BANK PLAZA			ART UNIT	
SUITE 3500			PAPER NUMBER	
ST LOUIS, MO 63101			1771	

DATE MAILED: 12/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/964,118	Applicant(s) RODGERS, EUGENE DAVID	
	Examiner Elizabeth M Cole	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2003.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10, 18-21, 25, 26, 28, 29 and 37-45 is/are pending in the application.
- 4a) Of the above claim(s) 37-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 18-21, 25, 26, 28, 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

1. Newly submitted claims 37-45 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 37-45 are related to the other pending claims as intermediate/final product. The intermediate product of claims 37-45 could be used as flocking fibers.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 37-45 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4, 6, 18-21, 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 06-108,309, (machine translation attached). JP '309 discloses a fabric comprising magnetic fibers. The magnetic fibers may have a sheath/core structure wherein the core comprises a polymeric material having magnetic particles, (designated as B in the figure), disposed therein and the sheath comprises the polymeric material, (

designated as A in the figure). The polymeric material corresponds to the claimed polymer fiber matrix. The magnetic fibers may be formed into woven, knitted and nonwoven fabrics. See paragraphs 0006, 0023 - 0027. JP '309 differs from the claimed invention because it does not disclose stitching the fabric. However, JP '309 teaches that the magnetic fiber containing fabrics may be formed into bedding. It is conventional to stitch bedding in order to hem it, etc. Therefore, it would have been obvious to have stitched the magnetic fabric disclosed by JP '309 since stitching and sewing are completely conventional methods of shaping and securing fabrics, especially fabrics which are used in bedding, such as sheets, bedspreads, etc.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP '309 as applied to claims above, and further in view of Ishino et al, U.S. Patent No. 4,515,850. JP '309 does not teach employing a slit film fiber containing magnetic powder to form a magnetic fabric. Ishino et al teaches that magnetic fibers may be formed from films which comprise magnetic powder which are slit into thin ribbons and woven into fabrics. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed slit film fibers in the fabric of JP '309. One of ordinary skill in the art would have been motivated to employ slit film fibers because Ishino et al teaches that magnetic slit film fibers are alternative, known magnetic fibers.

5. Claims 3, 5, 7-9, 25-26, are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '309 as applied to claims above, and further in

view of Miyaguchi, U.S. Patent No. 5,882,292. JP '309 does not teach coating or printing an additional layer of magnetic material onto the fabric and does not specifically teach wearing or "laying on" the magnetic fabric. Miyaguchi discloses that magnetic materials may be printed or coated on to fabrics. Miyaguchi discloses that printing or coating the magnetic material allows it to be placed in particular patterns or configurations corresponding to particular part of the person who will be wearing garments or patches formed from the coated fabric. See col. 2, lines 39-47. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have further applied the magnetic coating as taught by Miyaguchi to the fabric disclosed by JP '309. One of ordinary skill in the art would have been motivated to have printed or coated the fabric of JP '309 with an additional magnetic layer in order to amplify the magnetic properties in certain regions of the fabric. JP '309 also does not teach that some regions of the fabric should have particular locations wherein the magnetic field is concentrate and other locations with no magnetic properties. However, in view of the teaching of Miyaguchi, it would have been obvious to have formed the fabric so that certain regions of the fabric had the magnetic field and certain areas had no magnetic properties. One of ordinary skill in the art would have been motivated to form the fabric so that it comprised these regions by the teaching of Miyaguchi that magnetic materials may be placed into fabric so that it forms patterns or configurations which are related to the intended use or wearer of the fabric.

6. Claims 10, 28-29 rejected under 35 U.S.C. 103(a) as being unpatentable over JP '309 in view of Miyaguchi as applied to claims above,

and further in view of NL 83-1728 to Visscher. JP '309 does not teach further incorporating a magnet into the fabric. Visscher teaches that magnets can be incorporated into fabrics in order to provide magnetic therapy to a particular part of a persons skin. Therefore, it would have been obvious to have sewn a magnet on to or between layers of the fabric of JP '309. One of ordinary skill in the art would have been motivated to have sewn a magnet on to the JP '309 fabric in order to further enhance the magnetic therapy which can be applied at a particular point of a person's skin.

7. Applicant's arguments filed 10/14/03 have been fully considered but they are not persuasive. Applicant argues that JP '309 does not teach a polymer fiber matrix and a plurality of magnetic particles. However, JP teaches that the magnetic particles can be distributed in the polymer matrix that makes up the fiber, i.e., the polymer fiber matrix. Applicant's specification and drawings, such as figure 3, use the same terminology as JP '309. With regard to claims 3 and 5, Applicant's arguments have been considered but are moot in view of the new rejection.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (703) 308-0037. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (703) 308-2414.

Inquiries of a general nature may be directed to the Group Receptionist whose telephone number is (703) 308-0661.

The fax number for all official faxes is (703) 872-9306. The fax number for unofficial faxes is (703) 305-5436.



Elizabeth M. Cole  
Primary Examiner  
Art Unit 1771

e.m.c